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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,581	02/26/2004	Konstantin Othmer	15814.16	3412
22913 7590 06/13/2007 WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER SING, SIMON P	
			ART UNIT 2614	PAPER NUMBER
			MAIL DATE 06/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,581	<b>Applicant(s)</b> OTHMER, KONSTANTIN	
	<b>Examiner</b> Simon Sing	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.  
     4a) Of the above claim(s) 42-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**9DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-41, drawn to a user device for simultaneously buffering and playing back recorded voice data.
  - II. Claims 42-45, drawn to a network server for saving data packets and retransmitting the data packets to a user device if requested.
  - III. Claims 46-48, drawn to a user device for recording incoming voice data if determined that the user is not participated in an incoming call.

The inventions are distinct, each from the other because of the following reasons:

Group II is distinct from groups I and III because a network based server, which saves data packets but without playback capability, is different than a user premises device with playback capability.

Group I is distinct from group III because of its unique feature of simultaneous buffering and playback buffered voice data, whereas in group III, the recording of voice data is based on determining the absence of the user, and the playback is performed at a later time.

During a telephone conversation with Mr. Carl Reed on 06/06/2007 a provisional election was made without traverse to prosecute the invention of group I, claims 1-41. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 42-48 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokunaga US Patent Publication No. 2002/0080925 in view of Dietz et al. US 2002/0176546 and further in view of Hamamoto et al US Patent No. 5,842,123.

2.1 Regarding claim 1, Tokunaga discloses a mobile phone in figure 2. Tokunaga teaches:

receiving voice data at the mobile phone during a communication session from a far end party (paragraphs 0002 & 0011);

playing the voice data being received to a user at the mobile phone (paragraphs 0002 & 0011); ;

buffering the voice data in a memory area (paragraphs 0002, 0011 & 0012);

receiving an input (switch 71) from a user to replay buffered voice data in memory area from 11, and buffering voice data received in memory area 12 (0012 & 0027);

receiving an input (switch 72) from the user to replay at least a portion of the buffered voice data in memory 11; and

replaying the voice data buffered in memory 11 (para. 0026 and 0027).

Tokunaga teaches switching from memory area 11 to memory area 12 for endless buffering received voice data, so that voice data buffered in memory area 11 can be played back (paragraphs 0012 & 0027), but fails to explicitly teach while the voice data in memory area 11 are being played back, received voice data are being buffered in memory area 12. Tokunaga fails to teach providing functions to alter the speed of playback.

However, Dietz teaches a mobile phone 100 in figure 1 for receiving voice data at the mobile phone, playing the voice data being received to a user at the mobile phone, buffering received voice data in a memory when the user's ear moves away from the mobile phone, receiving an input (move back to the mobile phone) from the user to replay at least a portion of the buffered voice data in memory, and replaying the voice data buffered in memory while continuing to buffer received voice data until the replay catches up with real-time voice data received (para. 0006, 0016 and 0017).

In addition, Hamamoto discloses a mobile device 500 in figure 24 for receiving voice messages, and user can select playback speed by switch 510 (+, 0, -, or fast normal, slow) (column 18, line 64 to column 19, line 18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Tokunaga's reference with the teachings of Dietz and Hamamoto so that the mobile phone would have provided functions for simultaneous recording and replaying, and functions to alter the speed of playback, because such a modification would have enabled a user record voice data in one memory area while replaying recorded voice data in another memory area, and would have enabled a user to speed-up the playback as taught by Dietz, or to slow down to normal speed for better voice quality.

2.2 Regarding claim 2, it is obvious that the mobile phone can be in a conference call with a plurality of users, or can be used at different times with different far-end users.

2.3 Regarding claim 3, Tokunaga teaches compressing voice data before storing (paragraph 0004), and it is obvious that when silence is not stored in audio compressing.

2.4 Regarding claim 4, Tokunaga teaches playback voice data previously buffered (paragraphs 0012 & 0027).

2.5 Regarding claim 5, it is obvious that when voice data from different far-end users can be stored in different memory areas during different call sessions.

2.6 Regarding claim 6, as discussed in claim 1, a user of the modified mobile phone can speed up the playback to catch up with real time telephone conversation.

2.7 Regarding claim 7, as discussed claim 1, Tokunaga teaches playback voice data (which obviously are from a particular far-end user when a one-to-one telephone conversation takes place) store in memory area 11.

2.8 Regarding claim 8, Tokunaga teaches voice data buffered in memory area corresponding to a particular time period (paragraphs 0012 & 0027).

2.9 Regarding claim 9, it is obvious that the user of the mobile phone is able to stop the playback to resume telephone conversation.

2.10 Regarding claim 10, Tokunaga teaches a plurality of memory areas in figure 4, so it is obvious that voice data buffered in different memory area can be sequentially playback.

2.11 Regarding claim 11, as discussed in claim one, Tokunaga teaches while playing back buffered voice data from one memory area, receiving voice data are being buffered in another memory area.

Art Unit: 2614

2.12 Regarding claims 12 and 13, examiner takes an office notice that it is obvious that a user of a recording device is able to selectively delete or erase recorded voice data.

2.13 Regarding claims 14-16, it is obvious that the mobile phone is able to communicate with another mobile phone (RF device in a packet data network) or a wired phone (from circuit switched network).

2.14 Regarding claim 18, it is obvious that the user of the mobile phone can only record and playback the voice data of a far-end party.

3. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tokunaga US Patent Publication No. 2002/0080925 in view Dietz et al. US 2002/0176546 and further in view of Hamamoto et al US Patent No. 5,842,123 and further in view of Chaturvedi et al US 7,043,266.

The modified Tokunaga reference teaches a mobile phone for simultaneously recording and playing back recorded voice data, but fails to teach using the mobile phone in network based instant connect (push-to-talk, or PTT) call.

However, Chaturvedi discloses a mobile station (phone) 12 or 14 with network based instant connect call in figure 1. Chaturvedi teaches a normal mode and a push to



Art Unit: 2614

talk mode (instant connect mode) (column 5, lines 24-27; column 6, lines 28-64; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the Tokunaga's reference with the teaching of Chaturvedi so that the mobile phone would have comprised a PPT mode, and the recording and playback would have applied to both normal mode or PTT mode, because such a modification would have enabled a user to communicate in different communication modes using a single device.

4. Claims 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. US 2002/0176546 in view of Hamamoto et al US Patent No. 5,842,123 and further in view of Chaturvedi et al US 7,043,266.

4.1 Regarding claim 19, Dietz discloses a mobile phone 100 in figure 1. Dietz teaches:

receiving voice data at the mobile phone;

playing the voice data being received to a user at the mobile phone;

buffering received voice data in a memory when the user's ear moves away from the mobile phone;

receiving an input (move back to the mobile phone) from the user to replay at least a portion of the buffered voice data in memory; and

replaying the voice data buffered in memory while continuing to buffer received voice data until the playback catches up with real-time voice data received (para. 0006, 0016 and 0017).

Dietz fails to teach providing functions to alter the speed of playback and using the mobile phone in network based instant connect call.

However, Hamamoto discloses a mobile device 500 in figure 24 for receiving voice messages, and user can select playback speed by switch 510 (+, 0, -, or fast normal, slow) (column 18, line 64 to column 19, line 18).

In addition, Chaturvedi discloses network based instant connect call in figure 1. Chaturvedi teaches a normal mode and a push to talk (PTT) mode (instant connect mode) for mobile stations 12 and 14 (column 5, lines 24-27; column 6, lines 28-64; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dietz's reference with the teachings of Hamamoto and Chaturvedi so that the mobile phone would have comprised functions to alter the speed of playback, and a PPT mode, because such a modification would have enabled a user to speedup the playback to catch-up with real time voice data or to slowdown to get better voice quality, and enabled a user to communicate in different communication modes using a single device.

4.2 Regarding claim 20, it is obvious that the buffered voice data (received before playback) are from a most recent sender.

4.3 Regarding claim 21, Dietz teaches that voice data in memory is received prior playback.

4.4 Regarding claim 22, the modified Dietz reference teaches variable playback speeds, which enables a user to speed up (sip) portion of the buffered data.

4.5 Regarding claim 23, it is obvious that a user is able to stop the playback at anytime.

4.6 Regarding claim 24, Dietz teaches receiving voice data from a sender.

4.7 Regarding claim 25, examiner takes an office notice that it is obvious that a user of a recording device is able to manually delete or erase recorded voice data.

4.8 Regarding claim 26, it is obvious that voice data can be stored in memory (no deleting or erasing).

4.9 Regarding claim 27, as discussed in claim 19, the playback can be speed up or slow down.

4.10 Regarding claim 28, Dietz teaches removing period of silence (paragraph 0018).

5. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. US 2002/0176546 in view of Hamamoto et al US Patent No. 5,842,123 and further in view of Chaturvedi et al US 7,043,266 and further in view of Harris et al. US 6,665,283.

The modified Dietz teaches a push-to-talk mode, but fails to teach requesting missed data packet(s) from a network device, such as a server.

However, Harris discloses packet-switched network for instant connect call in figure 1. Harris teaches a push to talk (PTT) communication mode (instant connect mode) for mobile stations 102 and 104 (column 2, lines 27-39; column 13, lines 12-30), and re-transmitting dropped packets which are then properly inserted in buffered data (column 1, line 48 to column 2, line 11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the Dietz's reference with the teaching of Harris so that dropped data packets would have been retransmitted from a network device and properly inserted in the buffer, because such a modification would have ensured that proper voice data were received as taught by Harris.

6. Claims 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. US 2002/0176546 in view of Harris et al. US 6,665,283.

6.1 Regarding claim 31, Dietz discloses a mobile phone 100 in figure 1. Dietz teaches:

playing the voice data being received to a user at the mobile phone;

buffering received voice data in a memory when the user's ear moves away from the mobile phone;

receiving an input (move back to the mobile phone) from the user to replay at least a portion of the buffered voice data in memory; and

replaying the voice data buffered in memory while continuing to buffer received voice data until the playback catches up with real-time voice data received (para. 0006, 0016 and 0017).

Dietz fails to teach using the mobile phone in network based instant connect call and replacing dropped voice data packet(s) without delaying playing the received voice data.

However, Harris discloses packet-switched network for instant connect call in figure 1. Harris teaches a push to talk (PTT) communication mode (instant connect mode) for mobile stations 102 and 104 (column 2, lines 27-39; column 13, lines 12-30), and re-transmitting dropped packets which are then properly inserted in buffered data (column 1, line 48 to column 2, line 11). Harris further teaches that dropped voice data

Art Unit: 2614

packets can be retransmitted at the start of a conversation (PTT) to be inserted into the buffered voice data (column 2, lines 21-26).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dietz's reference with the teaching of Harris so that the mobile phone would have comprised a PTT mode, and dropped data packets would have been retransmitted at the next start of a PTT, because such a modification would have enabled a user to communicate in different modes with a single device, and to ensure dropped voice data packets were retransmitted without causing a delay in playing the received voice data.

6.2 Regarding claim 32, in the modified Dietz reference, Harris teaches requesting retransmitting dropped voice data packets from a network device (column 1, lines 48-57).

6.3 Regarding claim 33, Dietz teaches buffering voice data from a sender at a memory address pointed to by a pointer (paragraph 0016).

6.4 Regarding claim 34, it is obvious that if voice data packets are dropped continuously, the request for the dropped packets also continues.

6.5 Regarding claims 35 and 36, Dietz teaches speeding up playing the buffered voice data until it catches real-time voice data (paragraph 0017).

7. Claims 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al. US 2002/0176546 in view of Tokunaga US Patent Publication No. 2002/0080925 and further in view of Hamamoto et al US Patent No. 5,842,123 and further in view of Harris et al. US 6,665,283.

7.1 Regarding claim 37, Dietz discloses a mobile phone 100 in figure 1, comprising:  
a buffer for receiving voice data at the mobile phone;  
a module for playing the voice data being received to a user at the mobile phone;  
a capacitance detector for replaying at least a portion of the buffered voice data in memory; and

replaying the voice data buffered in memory while continuing to buffer received voice data until the playback catches up with real-time voice data received (para. 0006, 0016 and 0017).

Dietz teach capacitance detector for replaying buffered voice data, but fails to teach a button to manually start the replaying. Dietz teaches speed-up the replaying, but fails to teach that a user with an option to alter the speed of replaying. Dietz also fails to teach using the mobile phone in network based instant connect call (push-to-talk mode, or PTT mode).

However, Tokunaga teaches a mobile phone with a playback button 72 to start playing back voice data buffered in a memory area (paragraph 0027), and Hamamoto teaches a mobile device providing a user with different playback speeds for playing

Art Unit: 2614

stored voice message (column 18, line 64 to column 19, line 18). In addition, Harris teaches a mobile station (phone) operates in both cellular mode and PTT mode (column 2, lines 27-39; column 13, lines 12-30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Dietz's reference with the teachings of Tokunaga, Hamamoto and Harris, so that the capacitance detector would have been replaced with a mechanical button (functional equivalent) for starting the replaying, would have provided a user with replaying speed options to give the control of a replaying speed back to a user, and the mobile phone would have comprised a PPT mode, because such a modification would have given replaying controls (when to start and how fast) back to a user and would have enabled a user to communicate in different communication modes.

7.2 Regarding claim 38, it is obvious that a recording device storing vice data from different senders sequentially.

7.3 Regarding claim 39, Harris further teaches re-transmitting dropped voice data packets (column 1, line 48 to column 2, line 11).

7.4 Regarding claim 40, as discussed in claim 37, Dietz teaches continuing buffering received voice data while replaying buffered voice data.



Art Unit: 2614

7.5 Regarding claim 41, it is obvious that a control module deletes buffered voice data after a user entered a delete command.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

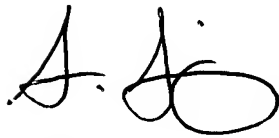
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2614

10. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Simon Sing whose telephone number is 571-272-7545.

The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached at 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.



S. Sing

06/07/2007



FAN TSANG  
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